



Department of Human Resources  
311 West Saratoga Street  
Baltimore MD 21201

**FAMILY INVESTMENT ADMINISTRATION  
ACTION TRANSMITTAL**

Control Number: # 17-15  
Revised 16-07

Effective Date: Effective Immediately  
Issuance Date: February 24, 2017

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES  
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT  
FAMILY INVESTMENT SUPERVISORS AND ELIGIBILITY STAFF  
BUREAU OF LONG TERM CARE STAFF  
HEALTH OFFICERS, LOCAL HEALTH DEPARTMENTS  
LOCAL HEALTH DEPARTMENT ELIGIBILITY STAFF  
ELIGIBILITY DETERMINATION DIVISION STAFF**

**FROM: DEBBIE RUPPERT, EXECUTIVE DIRECTOR, DHMH/OES** *Debbie Ruppert*  
**TRACEY C. PALIATH, EXECUTIVE DIRECTOR, FIA** *Tracey Paliath*

**RE: UTILIZING "GOOD FAITH" AND "REASONABLE CERTAINTY" FOR LONG  
TERM CARE APPLICATIONS AND REDETERMINATIONS AND DIRECT  
EXPRESS DOCUMENTATION REVIEW**

**PROGRAM AFFECTED: MEDICAL ASSISTANCE**

**ORIGINATING OFFICE: OFFICE OF ELIGIBILITY SERVICES, DHMH**

**SUMMARY:**

The average number of days to approve Long-Term Care Medicaid (LTC-MA) applications in the past generally exceeded 30 days. As a result of the 2016 legislative session, the Department of Health and Mental Hygiene (DHMH) budget bill contained a requirement to track the progress of all LTC-MA applications from the time of filing throughout the six-month consideration period in 15-day increments until a final decision is rendered. The new process is completed within the **LTC Application Tracker** files in the Bureau of Long Term Care (Bureau) and in the other 20 Local Departments of Social Services and the DHMH Waiver Unit. A critical part of the process is applying the Good Faith and Reasonable Certainty policy whenever possible in order to make an eligibility decision within 30 days.

Existing policy requires that applicants for Medical Assistance Long-Term Care (MA-LTC) verify specific eligibility factors at initial application and at redetermination for themselves and their community spouses. In some cases, applicants or their authorized representatives are not able to obtain the verification for understandable reasons outside of their control. A federal policy called "Good Faith" and "Reasonable Certainty" allows Case Managers to complete the eligibility process when the applicants or their authorized representatives report having difficulty in obtaining the specific verifications. In order to ensure that this policy is used and used correctly, Case Managers must consult their Supervisor.

This Revised Action Transmittal:

- Outlines situations where “Good Faith” and “Reasonable Certainty” may be applied to assist applicants, recipients and their authorized representatives;
- Removes a reference in the previous version that limited the use of the policy to the first 45 days of pending;
- Provides guidance to Case Managers to correctly and effectively assess the verifications received; and,
- Provides examples that indicate specific additional documentation needed at redetermination.

**Please Note:**

**The policy explaining Declaration of Information if Confirmed Impediment to a Timely Verification, as set forth in MR-112, remains unchanged.**

**PROCEDURAL REMINDERS**

1. The Case Manager must inform the applicant, recipient or the authorized representative in writing of the required information and verifications needed to determine eligibility and the due date.

2. The applicant, recipient or authorized representative must provide all required information and verifications within the required time frame. When the applicant, recipient or the authorized representative cannot obtain a specific required verification within the applicable time frame, for reasons beyond their control, the Case Manager should determine **(with Supervisory approval)** whether an eligibility decision is possible based on the documents provided to date and a written declaration by the applicant, recipient or authorized representative of the reason(s) the information has not been verified.

3. The Case Manager can process the case in CARES if all of the following conditions exist:

- The applicant, recipient or authorized representative made a documented “good faith effort” to obtain the required verification in a timely manner;
- The required verification cannot be obtained for reasons beyond their control, and there is no other way to verify the specific factor of eligibility to render an eligibility decision;
- The applicant, recipient or authorized representative has attested information that he/she believes to be accurate;
- No other available information leads the Case Manager to believe the statement of the applicant, recipient or authorized representative is inaccurate or incomplete; and,
- The applicant, recipient or authorized representative agrees to produce the required verification as soon as it becomes available but no later than the next scheduled redetermination (provided there is no legal bar to accessing funds or data, such as pending guardianship proceedings).

4. If good faith and reasonable certainty will be used to process the case, the Case Manager or designated staff in the local office or the Bureau must code the **LTC Application Tracker** to indicate the use of the policy, as shown in the circled field below.

**Note:** When all of these conditions are met, an eligibility determination may be based on the applicant's, recipient's or authorized representative's written declaration of the facts. Case Managers should create a 745 alert to follow-up on missing verifications at reasonable intervals as instructed by the Supervisor.

### Example 1

Angela Green files an LTC application on behalf of her mother, Suzie Green. Ms. Suzie Green is in a nursing home and prior to her stroke, handled her own affairs and did not appoint a Power of Attorney (POA). Ms. Green has two bank accounts, one she owns jointly with Angela, and the other account is from Shady Savings, which has merged with another institution, SH Credit Union. Angela is able to obtain verification of the joint account, but is unable to obtain verification of the \$650 she believes is available in the other account, and has addressed this by initiating guardianship proceedings. Meanwhile, Angela has contacted the SH Credit Union to request verification and asks them to confirm that the account does not exceed \$650 as of the month of application. Angela presents the following documents to the Case Manager:

- A copy of her letter to SH Credit Union requesting the current account balance.
- A letter from SH Credit Union, indicating information may be released only to the account holder, POA, or Guardian or that no information can be provided.
  - Often a financial institution will not furnish any written statement to an unauthorized third party. In this case, Angela could submit an affidavit or letter, confirming that a representative of the Credit Union told her in person or by telephone that no account information can be released and the date and time of the response from the financial institution.
- A bank statement from the Shady Savings account prior to the merger showing a \$602 balance.

- A letter signed by Angela explaining her efforts to obtain a current statement, and her belief that the account balance does not exceed \$650, and agreeing to submit the verification as soon as it is available.

In this case, the Case Manager considers the \$650 as an unavailable resource, which is therefore excluded in the calculation of total countable resources. The Case Manager narrates regarding the inaccessible asset, which still needs to be verified as soon as it becomes accessible, and takes the steps necessary for Ms. Green's eligibility to be finalized. At redetermination, the Case Manager must request bank statements for the SH Credit Union account. If such statements have not been submitted, and Ms. Susie Green has established that Ms. Angela Green is the authorized representative (possibly guardian or conservator), then the Case Manager shall close the case for failure to submit the required verifications.

## Example 2

Mr. Cheeks is in a nursing home and is represented by his POA, Mr. J. Jones. Mr. Jones provides bank balances as of the month of application but states his client's assets prior to the last month are unknown, and that his client is incapacitated. Since Mr. Jones has known Mr. Cheeks' personally and professionally for many years, he is aware of Mr. Cheeks' finances and knows where relevant records are kept.

Mr. Jones must review records and request any missing information required to establish Mr. Cheeks' assets during the look-back period (60 months). A decision of eligibility cannot be made based on a written statement from Mr. Jones attesting to his recollections and belief as to the value and disposition of Mr. Cheeks' assets during the look-back period.

In a variation of our scenario, Mr. Cheeks' stroke is sudden and unexpected, and although Mr. Jones has agreed to accept POA, Mr. Cheeks had not explained his finances or where his records were kept. In this situation, Mr. Jones should be provided with an extension to obtain the required documents. The Case Manager should complete a 745 alert to follow-up on receipt of the documents every 15 days.

**Note:** Maryland **is not** changing its MA-LTC eligibility policy to permit presumptive eligibility or declaratory applications. All factors of MA eligibility must still be verified by the applicant, recipient, or the authorized representative. However, the verification requirements must be reasonable. Allowance must be given for unusual situations when the applicant, recipient or authorized representative is making a "good faith effort" but, due to a documented impediment outside his/her control, is unable to obtain the required verification within the applicable time frame.

- It is not acceptable for an application to remain pending beyond the 6-month consideration period without an eligibility decision.
- Case Managers must utilize the **LTC Application Tracker** to update progress and send notices using the required increments within the 6-month consideration period for pending applications.

- If the Case Manager has received complete information and can clearly ascertain the facts of the case, then the Case Manager, (**with Supervisory approval**) should process the case, even if a specific verification cannot be obtained until later.
- Eligibility is not guaranteed. If verification subsequently shows that the recipient is ineligible, the Case Manager should promptly conduct an unscheduled redetermination based on this change in information.
- Existing policy relating to the extension of time limits also is relevant. However, such extension should not be utilized routinely and repeatedly to delay eligibility determinations.

### **DOCUMENT EVALUATION:**

#### **Non-Traditional Deposit Accounts (e.g. Direct Express, Green Dot, Rush Cards and other loadable cards)**

Funds such as SSA benefits, retirement benefits, pensions, etc., may be deposited or loaded electronically **to a prepaid debit card program**. These nontraditional accounts issue fee-based monthly account statements or the applicant, recipient or authorized representative may view a transaction history online to obtain an available balance at no cost. These statements may include an account balance page that does not reflect a balance for the first day of the month.

These non-traditional deposit accounts are not bank accounts. Until we receive official federal guidance regarding such accounts, the Case Manager should accept the amount that is available at the time the account balance page was printed. Although it is not ideal, an eligibility decision can be based on the information and verification provided. It will require the Case Manager to make a manual calculation by using the *Available Balance* provided and add or subtract the daily transactions listed on the transaction summary statements until the first of month is reached. Therefore, applicants, recipients or authorized representatives who provide statements that include an Account Balance page have satisfied the resource requirement because it is through no fault of their own that a first of month balance is not available.

For applicants, recipients or authorized representatives who have not yet provided a nontraditional account statement, the Case Manager should inform the applicant, recipient or authorized representative that they must submit a current transaction history as well as an Account Balance page if they are unable to obtain a full monthly account statement.

#### **Example 1 (Single month available balance statement & transaction summary provided)**

Ms. Brown submits an available balance printout from Direct Express dated 11/14/2014 and a transaction summary for November 2014 that shows various charges and credits. The Case Manager must make a manual calculation by using the ***Available Balance*** provided on 11/14/2014, add all the charges and subtract all of the credits listed prior to 11/14/2014 on the

November 2014 transaction summary statement to calculate the 11/1/2014 (first day of the month) balance.

**Example 2 (Single month available balance statement & multiple transactions summaries provided)**

Ms. White submits a single available balance printout from Direct Express dated 10/30/2014 and transactions summaries for June 2014, July 2014, August 2014, September, 2014 and October 2014. The Case Manager must make a manual calculation by using the **Available Balance** provided on 10/30/2014, add all the charges and subtract all of the credits listed prior to 10/30/2014 on the October 2014 transaction summary statement to calculate the 10/1/2014 (first day of the month) balance. Then using the calculated 10/1/2014 balance, add all the charges and subtract all of the credits on the September 2014 transaction summary statement to calculate the 9/1/2014 (first day of the month) balance. This method should be continued to calculate the balances for August, July and June 2014.

**At both application and redetermination, the Case Manager will evaluate the submitted documents to determine if a transfer of assets has occurred. When the information provided is vague, incomplete, or not consistent, the Case Manager should request additional documentation.**

When reviewing the submitted documents, the Case Manager must remember to assess if a transfer occurred and determine if the transfer will cause a penalty period.

- Determine if the transfer occurred within the “look-back” period or during the certification period.
- Determine which asset was transferred.
- Determine if the transferred asset requires a penalty period.
- Determine the fair market value of the transferred asset if a penalty applies.
- Determine the amount received for the asset.
- Determine when the asset was transferred.
- Determine why the asset was transferred.
- Determine if more than one transfer occurred.

## **REMINDERS**

- The Case Manager needs to assess, on a case-by-case basis, which of the verification approaches described in this AT is appropriate for a particular applicant or recipient.
- When it can be verified that the LTC applicant was a recipient of a needs-based public benefit at any time during the 5-year period before the month of application, verification of the value of resources during the look-back period is not required.
- If the required documents are not provided by the end of the 6-month consideration period, the Case Manager will deny the application at that time.
- If the required documents are not provided by the end of the 6-month consideration period, through no fault of the applicant, the Case Manager will determine if all of the conditions have been met to demonstrate the applicant has made a good faith effort to obtain the required documents. If all remaining factors of eligibility have been established, the Case Manager will determine eligibility (**with Supervisory approval**). If approved, the applicant must provide the missing documents at the next redetermination.
- If, at any point during a certification period, the Case Manager determines that the recipient was over scale in resources, the Case Manager shall refer the case to the OIG/Recoveries as appropriate.

## **INQUIRIES:**

Please direct MA policy questions to the DHMH Division of Eligibility Policy at 410-767-1463 or 1-800-492-5231 (select option 2 and request extension 1463)

cc: DHR Executive Staff  
DHMH Executive Staff  
FIA Management Staff  
Constituent Services  
DHR Help Desk